

Notice of Allowability

Application No.

10/538,998

Examiner

Yong Chu

Applicant(s)

DING ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 05/10/2007.
2. ☒ The allowed claim(s) is/are 1,2,9-14,21-26,33-38,45-50, and 57-60 (renumbered as 1-30).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 04/30/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission of IDS filed on 04/30/2007 has been entered.

Claims 3-8, 15-20, 27-32, 39-44, and 51-56 have been canceled by the Amendment filed on 19 January 2007. Therefore, claims 1,2, 9-14, 21-26, 33-38, 45-50, and 57-60 are pending.

Claims 1, 2, 9-14, 21-26, and 33-36 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 37-50, and 57-60 directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, claims 37-50, and 57-60 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement groups as set forth in the Office action mailed on 13 April 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or

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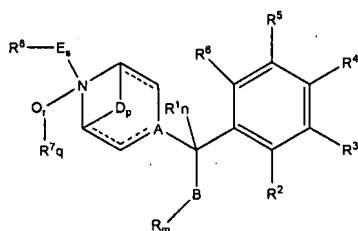
includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Information Disclosure Statement

Applicant's Information Disclosure Statement, filed on 04/30/2007, has been considered. Please refer to Applicant's copies of the PTO-1449 submitted herewith.

Reasons for Allowance

The present invention is directed to a compound of the formula (I)



, a N-oxides, and agriculturally-acceptable salts thereof, a

composition containing said compounds and a method of using said composition to control tobacco budworm wherein: **m** and **n** are 1; **q** is 0; **r** is 0 or 1; **s** is 1; **p** is 0;

A is selected from C and -CH forming a six-membered azine ring selected from piperidine, 1,4-dihydropyridine, and 1,2,5,6-tetrahydropyridine;

R¹ is H; **R² – R⁶** is defined as in claim 1;

B is -O, -OCH₂, or -OC(=O)NR¹⁵, wherein **R¹⁵** is H;

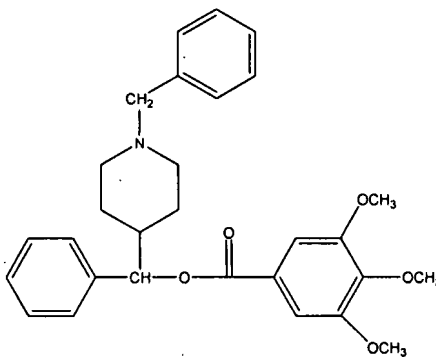
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R is a substituted phenyl, wherein substituents **R**¹⁷, **R**¹⁸, **R**¹⁹, **R**²⁰, and **R**²¹ are defined in claim 1;

R⁸ is a substituted phenyl, wherein substituents **R**²², **R**²³, **R**²⁴, **R**²⁵, and **R**²⁶ are defined in claim 1;

E is $-(\text{CR}^{27}\text{R}^{28})_x-(\text{CR}^{29}\text{R}^{30})_y-$, wherein **x** is 1, and **y** is 0, wherein substituents **R**²⁷–**R**³⁰, are defined in claim 1.

The closest prior art of record is US Patent No. 3,100,775 (Roring et al.). Roring



et al. disclose a compound of formula

The prior art compound is patentably distinct from the instantly claimed compounds of formula (I) in claim 1, because the prior art compound has **B** as $-\text{OC}(=\text{O})$ group, patentably distinct from the instantly claimed compounds wherein **B** is $-\text{O}$, $-\text{OCH}_2$, or $-\text{OC}(=\text{O})\text{NR}^{15}$, wherein **R**¹⁵ is H. The term “second compounds” is defined in paragraphs [0177]–[0179] of the specification.

The claims of method of using are supported by the data disclosed in the specification. Therefore, claims 1,2, 9-14, 21-26, 33-38, 45-50, and 57-60 are allowed.

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Telephone Inquiry



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759.

The examiner can normally be reached on 7:00 am - 3:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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